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7 Attorney for *Defendant*
8 RYAN ROSENTHAL

9 United States District Court
10 Northern District of California
11 Oakland Division

12 PEOPLE OF THE STATE OF CALIFORNIA,

13 *Plaintiff,*

14 vs.

15 RYAN ROSENTHAL,

16 *Defendant.*

No. **17-CR-0133 JST**

SENTENCING MEMORANDUM; EXHIBITS A
AND B

Date: October 26, 2018

Time: 9:30 AM

Courtroom: 2, 4th Floor, Honorable Jon S.
Tigar, Judge

17 SENTENCING MEMORANDUM

18 1. Introduction.

19 Defendant is on for sentencing on a negotiated plea to 18 U.S.C. § 2252(a) – Receipt of
20 Child Pornography (Count One) and 18 U.S.C. § 2422(b) – Coercion and Enticement (Count
21 Two). He has entered into a Rule 11(c)(1)(C) agreement in which the parties have agreed to a
22 guideline offense level of 37 and a recommended sentence of 135 months imprisonment, lifetime
23 supervised release, a mandatory special assessment of \$10,200 and restitution to be determined
24 by the Court. The Rule 11(c)(1)(C) agreement contains an expanded search condition but the
25 parties have not agreed on any other conditions.

26 The guideline sentencing range for an offense level of 37 is 210-262 months, assuming
27 a criminal history score of 0-1. The presentence report calculates defendant's criminal history
28 score at 0.

The presentence report concurs with the guideline offense level calculation in the plea

1 agreement and recommends a downward variance from the guidelines to 135 months

2 **2. This court should follow the presentence report's**
 3 **recommendations and impose a sentence of 135 months.**

4 The court should impose a sentence of no more than 135 months, even though the
 5 recommended guideline sentencing range is 210-262 months.

6 1. The probation report lists the following factors in support of a below guideline
 7 sentence of 135 months: defendant's childhood history of trauma including the loss of his father,
 8 early onset of alcohol consumption at age 12 (induced by a domineering uncle after his father
 9 died), very early exposure to adult pornography at age 8, willingness to participate in therapy,
 10 and lifetime supervised release.

11 2. In addition, the defense psychological assessment by Dr. Coles (Exhibit A), shows that
 12 defendant is not a pedophile and has "a very low risk for sexual reoffense." Regarding Dr.
 13 Coles' conclusion that defendant is not a pedophile, Dr. Coles noted the complete absence of
 14 any child pornography in defendant's possession except for the images of the two minor victims
 15 involved, that the two victims were not pre-pubescent children, and that defendant has had a
 16 history of relationships with adult females. Dr. Coles found that there are "no significant
 17 psychopathology in his psychological functioning" and has no antisocial personality traits. Dr.
 18 Coles concludes that "sex offender treatment both in prison and in the community when he
 19 paroles, would like[ly] reduce his risk for sexual reoffense even lower than his already low risk
 20 level."

21 3. In his letter to the court (Exhibit B), defendant has accepted responsibility and
 22 expressed remorse for his conduct. Defendant said he did not intend to harm the victims but
 23 now realizes that he did, has gained insight, and will not engage in such conduct again.

24 **3. The court should consider not imposing certain**
 25 **of the conditions recommended in the presentence report.**

26 As the plea agreement calls for lifetime supervised release, recommended conditions are
 27 potentially lifetime conditions:


28 **Condition 11 -- Ban on accessing adult pornography without prior approval of the**
probation officer: This condition is too broad. Defendant's offenses didn't involve adult

1 pornography and is pure speculation that his viewing legal adult pornography would increase
2 the risk of reoffense.

3 Condition 12 -- 100 foot proximity ban re "playgrounds, theme parks, public swimming
4 pools, schools, arcades, children's museums or other specific locations as designated by the
5 probation officer." Defendant's mother's home at 8016 Rhea Vista Drive, Whittier, CA 90602
6 is approximately 500 feet from the Lydia Jackson Elementary School. This location should be
7 excluded from the proximity ban. Regarding playgrounds, theme parks, and public swimming
8 pools, defendant should be permitted to go to these places at the discretion of the probation
9 officer.

10 Condition 19 -- Ban on alcohol use: The offenses did not involve the use of alcohol and
11 there is no connection between use of alcohol and the crime. While the presentence report
12 mentions some past problem with alcohol, an "addictive personality", and that defendant
13 completed a substance abuse program while incarcerated, defendant had a successful career as
14 a district manager and has not been diagnosed as an alcoholic or compulsive drinker. The
15 presentence report also mentions that defendant quit drinking after a friend of his was killed by
16 a drunk driver. Any restriction on alcohol use should be at the discretion of the probation
17 officer.

18 Dated: Oakland, California, Friday, October 19, 2018.

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22 Robert J. Beles
23 Attorney for Defendant
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